IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

Crl.MC.No. 3746 of 2007()

CC.1163/2005 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA

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PETITIONER/ACCUSED NO.4:

DILIP RAJ P.R,
AGED 24,
S/O.DEVAKI,
PANAYANTHENGIL HOUSE,
CHELAKOMBU KARUKACHAL,
KOTTAYAM.

BY ADV. SMT.RADHIKA P.GOPINATH

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3746 of 2007

Dated this the 14th day of December 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 498A I.P.C. He is the fourth accused. He is the brother-in-law of the de facto complainant. Cognizance has been taken on the basis of a final report submitted by the police after due investigation. Cognizance was taken as early as in 2005 as can be seen from the number assigned to the case, that is C.C.No.1163/2005. The learned counsel for the petitioner in reply to a specific query by this court concedes that the charges have already been framed and the petitioner did not claim and has not been discharged under Section 239/240 Cr.P.C. The matter stands posted for trial to 26/12/2007. At this eleventh hour, the petitioner has come to this court with this petition under Section 482 Cr.P.C.

2. What is the prayer? The short prayer is that invoking the powers under Section 482 Cr.P.C, the proceedings against the petitioner may be quashed. What is the reason? The only reason urged is that the petitioner has a valid defence of alibi with the help of Annexure A2 produced before court now. A plea of alibi cannot obviously be considered and resolved in

proceedings under Section 482 Cr.P.C, especially so when the plea is based only on a certificate like Annexure A2 produced before court. The petitioner having not claimed discharge under Section 239 Cr.P.C must certainly now participate in the trial and advance his pleas in defence.

3. The learned counsel for the petitioner then submits that the petitioner is a student of the Engineering College and that he has to face his examination during the period at which the case is listed for trial. The petitioner can certainly appear through counsel and apply for exemption from personal appearance under Section 317 Cr.P.C. I have no reason to assume that if the petitioner does not dispute identity and take all the necessary steps to apply for exemption, the learned Magistrate would not grant such exemption. If the petitioner, a young man, has to appear for his examination, certainly the learned Magistrate must consider his plea sympathetically and pass appropriate orders exempting him from personal appearance.

4. With the above observations, this petition is dismissed.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007